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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-492

STATE OF OHIO,

Petitioner,

v.

TERRY L. GALLAGHER,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

I.

Should the Miranda Rule be extended to a parole officer when he interviews a Defendant, parolee, who is incarcerated on a new charge so as to exclude the parole officer's testimony in a later trial as to defendant's statements to him if the parole officer did not advise his parolee of his right to remain silent, his

right to counsel, the fact that any statements he makes can and will be used against him at trial?

II.

Assuming that a parole office is required to give said Miranda Warnings, is a previous recitation of the Warnings of the police officers sufficient where it has been followed by promises made to the Defendant for the purposes of gaining a guilty plea?

STATEMENT OF THE CASE

On or about May 27, 1972, the Seven/Eleven Store, located at 405 Xenia Avenue, Dayton, Ohio, was the scene of an armed robbery. According to the testimony of the clerk who was robbed at that time, there were approximately six persons within the store. Two men standing side by side were within arms length, one with a gun. According to the testimony of the victim, one of the robbers was a tall man who had the gun, who made all the statements as to taking the money, and who, in fact, did all the actions alleged to have occurred. The victim then identified the Respondent as the person standing next to the man conducting the robbery. The victim admitted that Respondent said nothing, did nothing, had no weapon, did not place said victim in fear and in no way physically or orally participated in any manner in the conduct of the robbery.

Respondent was arrested in connection with the above described robbery and on June 22, 1972, was interrogated by a Detective Wright and Detective Walsh.

On said date Defendant executed a Rights Waiver setting forth the rights proscribed by *Miranda v. Arizona,* he was subsequently interrogated by the said Detectives, Wright and Walsh. During the course of said interview or interrogation, the detectives confronted Respondent with a co-defendant whom they indicated "copped out" to the charge. Further, a "deal" was made with Respondent that if he would plead guilty to the robbery of the Seven/Eleven Store no further charges would be brought against him. (Ap 32) It further appeared from the testimony of Detective Wright that the charges that would not be filed were not, in fact, provable against this Respondent and the co-defendant. (Ap 32-33) It should be noted that these promises not to prosecute on additional charges were made on June 22, 1972. On June 26, 1972, subsequent to the promises that were made to Respondent, Parole Officer Sykes appeared at the City of Dayton Jail where Respondent was incarcerated to discuss the charges of robbery with Respondent. It should also be noted that respondent was at that time on parole and in the charge of Parole Officer Sykes; respondent refused to discuss the matter. Parole Officer Sykes returned to the Dayton Jail to again discuss with Respondent this alleged crime on July 3, 1972, and as a result of this conversation, Parole Officer Sykes was permitted to testify over objection as to statements made to him by Respondent in the July 3, 1972 interview. On the basis of the statements made during said interview, Defendant was convicted of the crime of armed robbery and was sentenced to 10 to 25 years in the Ohio State Penitentiary.

An appeal was duly taken and on May 30, 1973, the Court of Appeals for Montgomery County, Ohio

affirmed the Judgment of conviction. An appeal was taken to the Ohio Supreme Court and on June 26, 1974, the Ohio Supreme Court reversed the conviction holding that "testimony as to utterances made by the accused to his parole officer is inadmissable at trial where the utterances were in response to questions by the parole officer, and, prior to the questioning the parole officer failed to advise the accused of his right to remain silent, his right to be provided with counsel prior to questioning and to warn him that any utterances may be used as evidence against him."

ARGUMENT

I.

A HOLDING OF *MIRANDA V. ARIZONA* INCLUDES PAROLE OFFICERS OR ANY OTHER AUTHORITIES WHO INTERROGATE OR INTERVIEW PERSONS WHO ARE INCARCERATED AND RESTRAINED OF THEIR FREEDOM IN A COMPULSORY ATMOSPHERE AND THE JAIL.

Respondent contends that under the Statutory Law of the State of Ohio, the parole officer, acting under color of authority of the Adult Parole Authority, is in effect, a police officer, as invisioned by the intent, if not the exact letter, of the ruling of the case of *Miranda v. Arizona* 384, U.S., 436 (1966)

> "There is hereby created in the Division of Correction of the Department of Mental Hygiene and Correction at bureau level an 'Adult Parole Authority'. . . ."

SECTION 5149.03 OHIO REVISED CODE, provides as follows:

> "The adult parole authority shall administer Chapter 5149 and provisions of chapter 2967.00 and Sections 2301.27, 2301.32 inclusive, 2905.28, 2941.46, 2951.05, 2951.06 and 2951.08 of the Revised Code, as imposed duties upon the Authority."

Sections 2941.46, 2951.05, 2951.06 and 2951.08 are Statutes empowering persons designated as probation officers, deputy sheriffs, police officers, etc., to make arrests under given circumstances. By granting or imposing upon the Adult Parole Authority the provisions of each of the Sections and by empowering it's parole officers to act under such sections, the Legislature has, in effect, if not, in fact, given to the parole officer the authority to make arrests, to incarcerate persons and to, in general, carry out many of the activities carried out by duly authorized, sworn police officers.

Section 5149.05, OHIO REVISED CODE, in fact, gives parole and field officers of the Adult Parole Authority the authority to carry firearms. Section 5149.23(a) OHIO REVISED CODE, gives the Adult Parole Authority the authority to deputize agents, which shall have all the powers of police officers in this State.

In addition, parole officers have the authority to arrest persons under their control for *suspected* violations of the conditions of their parole, to place parole detainers on persons arrested for crimes even before they are, in fact, convicted of such crimes, and to in many ways deprive persons of their freedom.

To say that such persons are not "police officers" of the State is to, in fact, completely ignore the intent of the decision in *Miranda v. Arizona* supra. In the instant case, the parole officer admittedly questioned Respondent, or if the Court prefer, discussed the matter with Respondent, while Respondent was incarcerated in the Dayton Jail. (BE 151-159) The parole officer admitted (BE 165) that he had the power to recommend the returning time of parolees to the penal institution from whence they were paroled. The parole officer admitted (BE 151) that on June 26, 1972, when he had attempted to question Respondent with regard to this matter, Respondent stated that he did not wish to make a statement with regard to the circumstances surrounding his arrest for this alleged crime.

The parole officer testified (BE 166-167) that he did not, in any manner, advise Respondent of his Constitutional rights, his right to counsel, his right to remain silent, that anything he said could and would be used against him in Court.

Further, the Court's attention is directed to the case of *Mathis v. United States* 391 U.S., 1

In that case, a Petitioner was convicted in the United States District Court on two counts of "knowingly filing false claims" in connection with his tax returns. The Petitioner was incarcerated in a state penal institution on a state charge. During such incarceration, an investigator from the Internal Revenue Service questioned the Petitioner on numerous occasions, eliciting statements and documents which were substantially and subsequently presented in the prosecution of the Petitioner under the federal charges.

The tax investigator admittedly did not advise the Petitioner of his Constitutional rights under the *Miranda*

v. Arizona Decision. In considering whether or not the tax investigator was required to so advise the prisoner, the Court held that (p. 4)

> "It is true that a routine tax investigation may be initiated for the purpose of a civil action rather than criminal prosecution. To this extent, tax investigations differ from investigations of murder, robbery and other crimes. But tax investigations frequently lead to criminal prosecutions just as the one here did . . . and, as the investigating Revenue agent was compelled to admit, there was always the *possibility* during his investigation that his work would end up in criminal prosecution. We reject the contention that tax investigations are immune from the Miranda requirements for warnings to be given to a person in custody" . . . . (emphasis added)

> "The government also seeks to narrow the scope of the Miranda Holding by making it applicable to only questioning of one who is in custody in connection with the very case under investigation. There is no substance to such a distinction, and, in effect, it goes against the whole purpose of the Miranda Decision, *which was designated to give meaningful protection to Fifth Amendment Rights.*" . . . . (emphasis added)

As is stated in *Miranda v. Arizona,* 384 U.S., at Page 478:

> "To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the *authorities* in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized."

It is Respondent's contention that the parole officer, William Sykes, had a duty to inform Respondent of his rights to an attorney, to remain silent and most

important, that any statements he made could and would be used against him in any trial of this cause.

In comparing the instant case with the case of *Mathis v. U.S.* the Court may state or may feel that tax investigations are entirely different than investigations conducted concerning a robbery. However, the important language in that case is that investigations frequently lead to criminal prosecution, just as the one here did, and is even more important to the instant case.

In the instant case, Respondent was not only a suspect in the crime which was the cause of this trial, but was, in fact, charged with the offense of armed robbery at the time he was questioned by Mr. Sykes.

It is undisputed in the record that the parole officer, William Sykes, knew that Respondent, was in fact, charged with armed robbery; and that he must have known that his testimony could have been used at trial. For this reason, alone, the parole officer should have advised the Respondent of his Constitutional Rights.

The cases relied upon by the Court of Appeals for Montgomery County Ohio, in dismissing appellant's appeal are summarized as follows:

People v. Ronald W., 24 N.Y. 2nd, 732, 302 N.Y.S. 2nd, 260, 262 (1962)

This case is clearly inapplicable to the instant case, inasmuch as, it involves a probation revocation proceeding and does not, therefore, involve the admissibility of statements of a probation officer in a trial of a probationer or parolee in a subsequent criminal proceeding.

In the *Ronald, W.* case the Defendant or Appellant, Ronald W. had been previously convicted of a crime and placed on probation. He, subsequently, in an

interview or discussion with his probation officer was noticed to have needle marks on his arm.

In a discussion with his probation officer regarding said needle marks, the probationer admitted that he had been using heroin which was a violation of the conditions of his probation.

The statements and admissions made to the probation officer were admitted in a subsequent probation revocation hearing wherein it was alleged that the probationer had violated the terms of his probation.

It should be noted that an express requirement of the probationer's probation in that case was that he answer all reasonable inquiries of this probation officer.

It should be further noted that the probationer was not, in fact, in custody at the time of the interrogation and, therefore, the provisions of *Miranda v. Arizona* would not apply.

That case has no applicability to the case at hand.

Gilmore v. People (Colorado), 171 Colo., 358, 457 P. 2nd 828 (1970) In this case, the Defendant-Appellant or as they are referred to in Colorado the Plaintiff-in-error was convicted of simple assault and of unnatural carnal copulation.

A part of the evidence presented against him was a statement or statements made to his federal probation officer.

Subsequent to his arrest, Gilmore denied any connection with the crime with which he was to be charged; however, he requested that his federal parole officer be called to the police station for a conversation.

At the police station, the Defendant made these statements which if not confessions, were in the nature of admissions against interest to his parole officer.

These statements were not elicited by parole officer, Fuller, nor did Fuller attempt to interrogate the Defendant about the crime with which he was charged.

As is quite obvious, the Gilmore case is distinguishable from the case at hand, inasmuch as the parole officer in that case was summoned to the police station by the Defendant who was at that time in custody. It should be noted that the Parole Officer was in no way attempting to question the Defendant about the crime with which he was charged. Such is not the case at hand. It is obvious from the testimony from the record, as indicated, that, in the instant case parole officer Sykes went to the jail, wherein, Respondent was incarcerated and on two occasions, not at the request of Respondent, but of his own volition. On June 26, Respondent refused to answer any questions concerning the offense with which he was charged. On July 3, he made statements to the parole officer with regard to the offense charged only upon questioning by parole officer Sykes. Clearly the statements made to the parole officer in the Gilmore case were not made in response to an interrogation as in the case at hand; and clearly, the Respondent herein did not summon or request the presence of parole officer Sykes as did Gilmore in the case of *Gilmore v. People.*

For these reasons, the case of *Gilmore v. People* herein cited, has no relevance and no applicability to the instant case.

Nettles v. State, (Florida) 248, 2nd, 259 (Florida District Court of Appeals, 1971)

The Nettles case cites the case of *People v. Ronald W.* supra and follows the theory of the case that a person who takes advantage of the parole opportunity waives his right to constitutional Miranda Warnings

when he accepts probation and states further that this waiver continues in effect even on a new and fresh crime as regards his probation officer.

This proposition has no validity taken in the context of the constitutional guarantees made to every citizen of the United States as is well pointed out by Judge Mann in his dissenting opinion in that case.

Judge Mann's dissenting opinion states, in part:

> "Such a proceeding is independent of the probation revocation proceeding unless the majority imply acceptance of probation carries with it an implied waiver of Constitutional Rights while probation continues. It is doubtful that even an expressed waiver of constitutional right in future cases could beheld but we need not contemplate that. I think it's clear that there is not a waiver of the Fifth Amendment by implication see *Spevack v. Klein,* 1967, 385, U.S., 511 87 Supreme Court, 616, 17 Lawyers Edition, September 5, 1974; *Garrity v. New Jersey,* 1967, 385 U.S., 493, 87 Supreme Court, 625, 17 Lawyers Edition Second 562."

It would appear that the Nettles' case and the case of *New York v. Ronald W.,* base their opinions upon the fact or the assumption in view of the case cited in Judge Mann's dissenting opinion.

State v. Johnson, (South Dakota), 202 N.W. 2nd, (1972) Defendant was charged with and found 'guilty' of the crime of obtaining money and property under false pretenses. According to the facts of the case, the Defendant was on probation for a previous violation and issued a check on a bank where he had no account. His probation officer testified that he went to Defendant's home to question him about the check issued; and that the two conferred in the yard outside

Defendant's home during which time Defendant admitted issuing the check but claimed it had been paid off.

Defendant contended that he had been subjected to custodial police interrogation and was entitled to a Warning of his Rights as required by Miranda. In overruling and/or dismissing Defendant's appeal the Court said:

> "Miranda Warnings do not have to be given on all interrogations. They must be given prior to questioning initiated by law enforcement officers after the person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Neither* of these compelling factors is present here". . . . (emphasis added)

The Court goes on to state that a probation officer does not have a peace officer's broad power of arrest.

The Johnson case is obviously, as the other cases cited by the Court, not applicable and is distinguishable from the present case. Apparently, the parole officers in this state have more broad arrest powers than the parole officers in the state of South Dakota. However, that is not the main distinguishing character of that case.

It is obvious from the statement that the two conferred in the yard outside the Defendant's home, that the Defendant was not in custody and merely had a conversation with his probation officer outside his home and not in the custody or in the custodial atmosphere of the police station.

In the instant case as previously mentioned, this Respondent was in fact, in custody and was questioned on not one, but on two occasions by his parole officer after said parole officer had been advised that the Defendant had no desire to discuss the case. The cases

binding as inadmissible statements made to parole officers without giving the person in custody the advice that he has a right to a lawyer and to remain silent are as follows:

People v. Gastelum, (Calif.) 237 Cal., App. 2nd 205, 46 Cal. R. 743 (1965).

The Gastelum case was decided by the District Court of Appeals Fifth District of California, September 23, 1965, prior to the United States Supreme Court holding in *Miranda v. Arizona.*

In that case, after discovering that his parolee had been using drugs prohibited by the terms of his parole, the parole officer accompanied by police officers went to the parolee's residence and found drugs. Subsequent to such findings, and while in custody, the parolee made confessions or admissions to his parole officer which had been admitted in his trial and which resulted in conviction. The California Court of Appeals stated that:

> "The only nominal question is whether, by analogy to the rule on search and seizure, Defendant's status as a parolee negated his Constitutional Rights to be advised of his right to counsel or to remain silent. The Supreme Court, in *People v. Derato*, Supra affirmed the right of a felon incarcerated in the state prison to be effectively informed of his right to counsel and of his absolute right to remain silent under the Fifth and Sixth Amendments. Certainly a parolee in constructive custody is no less entitled to these constitutional rights than is a felon in actual custody. Therefore, we conclude that the rule of Derato is applicable to a parolee and that it was a reversible error to admit Defendant's confession in evidence."

Further at page 746:

> "The Supreme Court of California, following principles enunciated by the United States Supreme Court, has held that the introduction of an involuntary confession elicited in violation of Defendant's rights under the Fifth Amendment to the United States Constitution constitutes a reversible error, per se."
>
> *State v. Lekas*, (Kansas) 201 Kan. 579, 442 P. 2d 11 (1968)

In the Lekas case Defendant was taken from his home by a parole officer and a police officer, being suspected of having a weapon in his possession and further being suspected of preparing to leave town. Based upon these suspicions he was, in fact, removed and taken to the police station where his parole officer alone questioned him regarding the possession of said weapon. The Defendant admitted the possession of the weapon to the parole officer and his admissions and subsequent evidence derived from said admission was introduced against him.

The Defendant was convicted and based his appeal upon the grounds that the parole officer did not advise him of his rights set forth in the Miranda decision. The Supreme Court of Kansas stated at page 15:

> "It should be emphasized that the issue here presented is not whether the Appellant's parole can be revoked after the Appellant confesses to the parole officer concerning a new crime, without first having been informed of his Constitutional Rights. Here the incriminating statements admitted into evidence were used to convict the Appellant for a new offense."

This is the issue confronting the Court.

The Kansas Statute sets forth the powers and authority of the Kansas State Board of Probation and Parole:

> "And all persons employed under the provisions of this act as probation or parole officers shall have and exercise police powers to the same extent as other peace officers and such powers may be exercised by them anywhere within this state."

The Kansas Court further states that on page 15:

> "As we construe the Miranda Decision, if the incriminating statements elicited from the Appellant while in the custody of the parole officer upon interrogation were to be used for the prosecution of a new offense, the parole officer was required to give the Miranda Warning."

The Kansas Court then goes on to cite the case of *Mathis v. United States* 391, U.S. 1, 88 Supreme Court 1503, 20 Lawyers Edition Second 381, (May 6, 1968)

The Mathis case, of course, is cited in this Brief although not referred to in the decision rendered by the Court of Appeals for Montgomery County.

It should be further noted that the authority conferred upon the parole officers of the State of Kansas is not that much more broad than those conferred upon parole officers for the State of Ohio. The Kansas Court further stated at Page 16:

> "In a situation of this kind the truth of the incriminating statements is immaterial."
>
> *State v. Williams* (Missouri, 486 S.W. 2nd 468 Missouri Supreme Court, 1972)

Defendant, parolee, was a resident at a regional treatment center and his parole officer made a warrantless exploratory search of his knapsack found on top of his dresser in a closet in his room and found

marijuana. Subsequent, to this finding, the Defendant was taken to the city police station where the parole officer advised him of his Miranda Rights, however, the parole officer failed to inform the Defendant that if he could not afford an attorney one would be appointed for him.

The Supreme Court of Missouri held that any statements taken subsequent to the advising of the rights and also subsequent to the failure to advise the Defendant that he could have a court appointed attorney, were inadmissible.

The Supreme Court of Missouri held that the search of the Defendant's belongings while in this semi or quasi custodial situation was not in fact, constitutional. That Court stated, however, at page 473:

> "The judgment of conviction, however, must be reversed for error in the admission of evidence of (1) the testimony of parole officers Perry and Cothman, both of whom testified that following his arrest and at the city police station under questioning by officer Perry, appellant admitted that he acquired possession of the marijuana after Officer Perry, having advised appellant of Miranda rights failed to inform him that the court would appoint an attorney for him if he could not afford one; (2) the testimony of police officers who subsequently took a written confession from appellant, and (3) the written confession."

That Court further held that:

> "Miranda requires officers of the Missouri State Board of Probation and Parole in the investigation of facts involving the possible commission by an indigent parolee of a fresh or new felony to give the parolee all four of the Miranda Warnings, where he has been arrested and taken into actual police custody."

As stated in the decision of the Ohio Supreme Court in the case *U.S. v. Deaton*, (C.A. 5, 1972) 468 F. 2d. 541 Certiorari denied, 410 U.S. 934 squarely confronts the precise question presented by this case, at page 544:

> "Deaton's parole officer testified over objection, to statements made to him by Deaton tending to incriminate Deaton on the harboring and concealing charge, uttered in response to the direct interrogation by the parole officer when Deaton was in custody, even without the officer having given Deaton the Warnings required by Miranda. We have considerable doubt as to the propriety of even calling a parole officer as a witness for such a purpose. But pretermitting that we have no doubt that the testimony was inadmissable unless the officer gave prior Miranda Warnings. A parolee is under heavy psychological pressure to answer inquiries made by his parole officer, perhaps even greater when the interrogation is by an enforcement officer."

Further the Ohio Supreme Court stated *State v. Gallagher*, 1974, 38 O.S. 2nd 291 and on page 297:

> "We agree that a parolee is under heavy pressure to cooperate with his parole officer. Here, the parole officer, testified that he had the power to recommend the return to prison of a parolee under his charge, and that Appellant might have assumed that his utterances were in some way confidential."

It is clear, therefore, that compulsion intervened when the parole officer sought to elicit a statement from appellant without first making known to appellant that the privilege against self-incrimination could be relied upon.

Capsulized, it would appear that petitioner's argument is that in the interest of justice the safeguards provided

by the Fifth Amendment of the Constitution of the United States should be in some instances set aside in an effort to get the criminals off the street. The argument, in addition to suggesting that the entire Miranda Decision should be reversed, says if the case warrants let us suspend the constitutional provisions temporarily in order to clean up our problem children, then we will invoke it at such time as someone sees fit. Petitioner's argument further suggests that the holding of the Ohio Supreme Court is an extension of the Miranda Doctrine to an area for which it was not intended. Respondent views the holding of the Ohio Supreme Court not as an extension but only as a judicial determination of what was intended by Miranda when it was written. The purpose of the Miranda Decision was to insure, without the necessity of judicial determination in each and every instance, that every person who was incarcerated and was subjected to the police dominated atmosphere would be given certain warnings and would be made aware of the rights provided him by the Fifth Amendment to the Constitution of the United States. The Miranda Decision was the culmination of many instances of improper police behavior in attempting to extract confessions from persons suspected of or charged with the commission of crimes. It is clearly within its purview that a parole officer may be a tool to be used in the extracting of such confessions.

In determining whether or not there is an inherent compulsion when the parolee is confronted by his parole officer, it is inconceivable to believe that the parolee would not feel some pressure by the very nature of the relationship and by the very fact that that person could suggest to the parole board that his parole

be revoked if he does not cooperate. An inherent compulsion becomes even more apparent when, as in the case at hand, a confession has been elicited from the "incarcerated parolee" by improper police activity such as promises to not prosecute for additional crimes.

Petitioner further relies upon the case of *Michigan v. Tucker*, 417 U.S. 433, at page 450. That case, of course is not relevant to this discussion for the reason that the statement sought to be repressed in that action was a statement made by a third person and not by the parolee himself. It is interesting to note, however, that Petitioner would take from that case one statement which may, in fact, be profound but is certainly not conclusive to this issue. While there may be strong reason for balancing the interests of society as opposed to those of the individual, there may be a statement which is well recognized in the law and perhaps even more profound than that set forth in the Petitioner's Brief and the reason for which many of our Constitutional safeguards were created. That being "better that a hundred guilty men go free than that one innocent person be convicted". In conclusion, it is respondent's position that the safeguards set forth in Miranda do in fact, apply to the parolee/parole officer situation and that in the interest of deterring improper activities by such parole officers as by police officers the Miranda Warnings must be given by the parole officer prior to his questioning of a parolee who is incarcerated on a new charge. Petitioner argues that logic and reason lead us to a different conclusion. It should be noted that logic and reason may have been relied upon in decisions prior to the holding in *Miranda v. Arizona*. However, practical experience taught us as set forth in that decision that sometimes logic and reason do not lead us to the rightful conclusion.

For the reasons set forth above the decision of the Ohio Supreme Court should be affirmed.

ARGUMENT

II.

DOES THE READING OF THE MIRANDA WARNINGS AND WAIVER THEREOF BY A PERSON CHARGED WITH OR SUSPECTED OF A CRIME OPERATE AS A WAIVER TO FUTURE STATEMENTS OR CONFESSIONS MADE WHEN SUCH READING AND WAIVER ARE FOLLOWED BY PROMISES FROM POLICE AUTHORITIES THAT WERE GIVEN SOLELY FOR THE PURPOSE OF EXTRACTING CONFESSIONS.

In determining this question the time sequence in this case is extremely important. Respondent was arrested and subsequently on June 22, 1972 read the Miranda Warnings by detectives, signed a rights waiver and was subsequently promised that if he would give a confession to the crime with which he was to be charged that the police authorities would not charge him with additional charges which they could not prove. The trial court properly found that such promises invalidated the Rights Waiver and excluded confessions made by respondent at the trial of this cause.

Petitioner now argues to the Court that the Rights Waiver signed by respondent was sufficient to apprise respondent of his rights and, therefore, that no

subsequent reading was required by the parole officer involved.

It should be noted that both visits by the parole officer to Respondent who was, in fact still incarcerated in the Dayton, Ohio Jail were subsequent to the signing of the Rights Waiver and the promises that were made. It is apparent that at that point respondent's desire to exercise his rights guaranteed by the Fifth Amendment to the United States Constitution had already been resolved by the improper activity of the police detectives involved. The respondent was in the position where the promises had been made, improper confessions elicited and what difference, if any, would one more confession make in viewing the totality of the circumstances in the instant cause; the improper activity began when the promises were made and they, in fact, vitiated any rights waiver that may have been signed by this respondent. Therefore, the balance of Petitioner's argument is of no force and has no validity.

CONCLUSION

In conclusion, it is respectfully urged that this Court give the holding in *Miranda v. Arizona* it's proper efficacy and apply it to the instant cause and affirm the decision of the Ohio Supreme Court.

Respectfully submitted,

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